SINGAPORE REPORTS

Middle East Shipyard Pte Ltd v Sin Chin Seng Shipbuilding Pte Ltd

COURT OF APPEAL (SINGAPORE) – CIVIL APPEAL NO 58 OF 1986
WEE CHONG JIN CJ, LAI KEW CHAI AND THEAN JJ
6 OCTOBER 1988

Civil Procedure – Security for appellants' delivery of possession of barge – Provision of security by respondents – Appellants' counterclaim dismissed – Security ordered to be returned to respondents – Appeal against such order – Security purely a measure of protection to safeguard appellants' rights in counterclaim – Security lapsed with dismissal of counterclaim

Civil Procedure – Interim injunction restraining appellants from removing barge out of jurisdiction – Whether merely an interlocutory injunction – Whether such an injunction would be ipso facto discharged by dismissal of respondents' action

The appellants agreed to build a certain number of barges for the respondents. They duly delivered some of the barges but did not deliver the remaining lot. In 1978, the respondents commenced 22 separate actions against the appellants and the appellants filed a counterclaim. The court ordered that the appellants deliver possession of the barge 'SAN 007' to the respondents upon the respondents providing security to the satisfaction of the registrar in a sum to be assessed by the registrar. Similar orders were made with regard to the barges in the other suits. Subsequently, the appellants' appeal against the assessed security was dismissed by the Court of Appeal.

In dismissing the counterclaim of the appellants, the trial court also ordered that the bank guarantee furnished by the respondents as security be returned to the respondents for cancellation. The appellants appealed to the Court of Appeal against the return of the bank guarantee. They contended that the order of the trial court restraining the appellants from removing out of the jurisdiction the barge 'SAN 007' until delivery of the barge to the respondents was merely an interlocutory injunction and that such an injunction would be ipso facto discharged by the dismissal of the respondents' action.

Held, dismissing the appeal:

(1) The security was ordered purely as a measure of protection to safeguard the rights of the appellants and not as compensation for the loss of these rights. These rights, if any, must pertain to the appellants' counterclaim. Therefore it must follow that the security will lapse with the dismissal of the counterclaim as the appellants would no longer be in a position to prove their claim.

(2) The furnishing of the security does not obviate the appellants from discharging the burden of proving their rights at the trial of their counterclaim. The security can only be realized if the appellants can prove the actual amounts owing to them.

(3) The bank guarantee is expressed to be made in respect of any judgment or order obtained by the appellants. As their counterclaim has been dismissed, it must necessarily follow that the guarantee ceases to be enforceable in the hands of the appellants.

(4) There is no merit in the appellants' contention. An interlocutory injunction is issued in a form that requires it to be continued, in the absence of a subsequent order to the contrary, up to but not beyond the final hearing of the proceedings. The order for delivery of the barges is an order for a one-off act. It is not a continuing act which can be ordered to last until trial. It would therefore be incorrect to say that such an order depends on the outcome of the trial. That being so, any loss caused by the making of such an order is left to be cured by the undertaking as to damages which the respondents were ordered to furnish.

Quek Mong Hua for the appellants/defendants.
Prem Kumar Gurbani for the respondents/plaintiffs.

Cur Adv Vult

Wee Chong Jin CJ (delivering the judgment of the court): This appeal arises from an order made by Sinnathuray J in respect of the appellants'/second defendants' notice under summons for directions and the respondents/plaintiffs' notice under summons for directions ordering, inter alia, that:

(a) the respondents' claim and the appellants' counterclaim be dismissed with no order as to costs;
(b) the bank guarantee furnished by the respondents in the sum of $2,000,000 be returned to the respondents for cancellation.

The appellants' appeal is only against that part of the order relating to the return of the bank guarantee to the respondents for cancellation.

The learned judge made the above order on the ground that the bank guarantee was given as security for the appellants' counterclaim which they may have had and which in the event had been dismissed.

The facts which are not in dispute are as follows. By a contract in writing dated 24 December 1976 made between the respondents and the appellants, the appellants agreed to build 40 dumb barges and 20 self-propelled barges for the respondents for eventual use in Burma. They duly delivered 36 dumb barges and 2 self-propelled barges. However, they did not deliver the remaining 4 dumb barges and 18 self-propelled barges.

On 5 April 1978, the respondents commenced 22 separate actions, one in respect of each barge and arrested all 22 vessels. The relief claimed by the respondents in each of these actions were as follows:

(a) a declaration that they were the sole owners of the barge; alternatively, they were entitled to have possession of the said barge decreed to them;
(b) damages for breach of contract dated 24 December 1976;
(c) an injunction to restrain the appellants from detaining the said barge or withholding possession thereof from the respondents; additionally or alternatively an injunction to restrain the appellants from removing out of the jurisdiction or disposing of in any way, or mortgaging the said barge.

On 20 October 1978, on the respondents' application the learned Chief Justice, ordered, inter alia, that the appellants deliver possession of the barge 'SAN 007' to the respondents upon the respondents providing security to the satisfaction of the registrar in a sum to be assessed by the registrar. Similar orders were made with regard to the barges in the other suits.

On 27 November 1978, the parties appeared before an assistant registrar for assessment of the security. This amount was assessed at $2m. The appellants, being dissatisfied with the amount, appealed. The appeal was dismissed by the learned Chief Justice on 12 December 1978 and the dismissal was affirmed by the Court of Appeal.

The sole issue in this appeal turns on the purpose for which the security was ordered.

This issue must be decided by looking at the circumstances giving rise to the order of court dated 20 October 1978. At that time, the appellants merely had a possessory lien in respect of the 22 vessels in their possession. In the appellants' appeal against the assessment of the security, the Court of Appeal found that:

> the security was ordered under the inherent jurisdiction of the court. If the court orders a possessory lien holder to relinquish possession, the order will include protection for any rights he may prove to have.

On this view, the security was ordered purely as a measure of protection to safeguard the rights of the appellants and not as compensation for the loss of these rights. These rights, if any, must pertain to the appellants' counterclaim filed on 25 November 1978. Therefore, it must follow that the security will lapse with the dismissal of the counterclaim as the appellants would no longer be in a position to prove their claim.

In our judgment, the furnishing of the security does not obviate the appellants from discharging the burden of proving their rights at the trial of their counterclaim. The security can only be realized if the appellants can prove the actual amounts owing to them. This point was conceded by Tan Soo Kuan, a director of the appellants, in an affidavit filed in on 28 November 1978. He said:

> Whatever security the plaintiffs provide will not go to the appellants as of right as they would necessarily have to prove the amount actually due to them before they can claim the security. But if the security is less than the sums recovered under the judgment, they will not be able to re-claim, as it were, for numerous reasons.

In this regard, the language of the guarantee furnished as security by the respondents is also significant. Paragraph 4 of the letter of guarantee reads:

> Now we, Standard Chartered Bank, ... in consideration of the court ordering possession of all the said twenty-two barges to the plaintiffs do hereby guarantee payment in respect of *any judgment or order* in the abovementioned suits or any of them ... (emphasis added)

The guarantee is expressed to be made in respect of any judgment or order obtained by the appellants. As their counterclaim has been dismissed, it must necessarily follow that the guarantee ceases to be enforceable in the hands of the appellants.

Finally, we come to the appellants' argument that the order of the learned Chief Justice was merely an interlocutory injunction.

On this basis, counsel for the appellants has cited numerous authorities to show that such an injunction would be ipso facto discharged by the dismissal of the respondents' action. It would follow from this argument that the parties ought then to be restored to the status quo and the respondents, being now unable to return the barges, should be ordered to give up the security in lieu of the barges.

We are of the opinion that there is no merit in the appellants' argument. In their motion taken out on 14 October 1978, the respondents sought the following orders:

(1) that the appellants be restrained from detaining the barge 'SAN 007' or withholding possession thereof from the respondents;
(2) that the appellants be restrained from removing out of the jurisdiction or disposing of it in any way or mortgaging the barge 'SAN 007'.

On 20 October 1978, the learned Chief Justice made the following order:

> Interim injunction in terms of prayer 2 of motion, on usual undertaking, to continue until defendants deliver possession of vessel to plaintiffs in terms of prayer 1 of motion to be read as follows :
> That the second defendants do deliver possession of the vessel to the plaintiffs upon the plaintiffs providing security to satisfaction of registrar in a sum to be assessed by the registrar and upon the plaintiffs giving the usual undertaking as to damages.

In *Spry on Equitable Remedies* (3rd Ed), an interlocutory injunction is defined as an injunction that is directed to ensure that particular defined acts do not take place or continue to take place pending the final determination by the court of the rights of the parties. Accordingly, it issues in a form that requires that, in the absence of a subsequent order to the contrary, it should continue up to but not beyond the final hearing of the proceedings.

The appellants have never challenged the order for delivery of the barges. The act required to be done under the order is a one-off act. It is not a continuing act which can be ordered to last until trial. It would therefore be incorrect to say that such an order depends on the outcome of the trial. That being so, any loss caused by the making of such an order is left to be cured by the undertaking as to damages which the respondents were ordered to furnish.

Accordingly, the appeal must be dismissed with costs.

Appeal dismissed.

Solicitors: *Lee & Lee*; *Prakash Gurbani & Chong.*

Reported by *Ng Sheau Jiuan*

Sim Mai Tik v Public Prosecutor

COURT OF CRIMINAL APPEAL (SINGAPORE) – CRIMINAL APPEAL NO 6 OF 1987
WEE CHONG JIN CJ, THEAN AND RAJAH JJ
4 OCTOBER 1988

Criminal Law – Dangerous drugs – Trafficking in 70 plastic bags of diamorphine – Appellant not a mere heroin addict – Abundant evidence to justify trial judge's findings – Whether one trafficking offence or 70 trafficking offences should have been charged – Misuse of Drugs Act (Cap 185, 1985 Ed), ss 2 & 17(c)

Words and Phrases – 'Anything that contains' – Misuse of Drugs Act (Cap 185, 1985 Ed), s 2

Words and Phrases – 'Contained' – Misuse of Drugs Acts (Cap 185, 1985 Ed), s 17(c)

The appellant was convicted and sentenced to death by the High Court on a charge of trafficking in 70 plastic bags of diamorphine weighing more than 67.49g. He appealed against the conviction contending that: (a) the trial judges erred in rejecting the appellant's evidence that the heroin found in his possession was for his own consumption; (b) the trial judges were wrong in rejecting the appellant's explanation for the things found in his room in Johor Bahru; (c) the trial judges misdirected themselves on the effect of his statement made under s 121(6) of the Criminal Procedure Code (Cap 113, 1970 Ed), part of which statement was retracted by the appellant; (d) the trial judges were wrong in holding that the appellant could lawfully be charged for one offence of trafficking when he should have been charged with 70 offences of trafficking in such quantity of drugs as were found contained in each of 70 sachets. The appellant submitted that the definition of 'controlled drug' in s 2 and the words 'contained in any controlled drug' in s 17(c) of the Misuse of Drugs Act (Cap 185, 1985 Ed) must be read strictly to apply to such quantity of diamorphine contained in any controlled drug that was packed in each of the 70 individual sachets, and not to the combined quantity of diamorphine found in all 70 sachets.

Held, dismissing the appeal:

(1) The issue of whether the heroin found in the appellant's possession was for his own consumption was a straight question of fact and credibility and the trial judges did not attach any credence to the appellant's evidence. There was abundant evidence to justify the finding that the appellant was not a mere heroin addict.

(2) The trial judges' finding that the things found in the appellant's room in Johor Bahru were things which a trafficker of drugs could be expected to have was an inference which the trial judges were entitled to draw from the totality of the evidence.

(3) The trial judges were entirely correct in rejecting the appellant's explanation for retracting part of the statement voluntarily given under s 121(6) of the Criminal Procedure Code (Cap 113, 1970 Ed).

(4) The words 'anything that contains' and 'contained' appearing in s 2 and s 17(c) of the Misuse of Drugs Act (Cap 185, 1985 Ed) refer to the content of the compound, mixture or receptacle in the possession of the accused person, and has nothing whatever to do with how the compound, mixture or receptacle is packed or mixed by the accused person. It is plain beyond all doubt that what matters is the prescribed minimum weight of the substance or product listed in the First Schedule found contained in any compound, mixture or receptacle, however packed or mixed, in the possession of the accused person at any given time.

Legislation referred to
Criminal Procedure Code (Cap 113, 1970 Ed) s 121(6)
Misuse of Drugs Act (Cap 185, 1985 Ed) ss 2, 5(a), 17(c)

Swaran Singh (*Jennifer Marie* with him) for the Public Prosecutor.

Dennis Tan for the appellant.

Cur Adv Vult

Wee Chong Jin CJ (delivering the judgment of the court): The appellant, Sim Mai Tik, was tried, convicted and sentenced to death by the High Court on the following charge:

> You, Sim Mai Tik, are charged that you, on or about 5 August 1984 at about 3.25 pm, at the Woodlands Customs Checkpoint, Singapore did traffic in a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act (Cap 185, 1985 Ed) to wit, 70 plastic bags of diamorphine weighing no less than 67.49g, without any authorization under the said Act or the regulations made thereunder and you have thereby committed an offence under s 5A and punishable under s 33 of the Misuse of Drugs Act.

He appealed against the conviction. At the conclusion of the hearing of the appeal, we dismissed the appeal. We now give our reasons.

The facts are these. On 5 August 1984, at about 7.45 am, acting on information received, a party of narcotics officers from the Central Narcotics Bureau, assembled at Woodlands Customs Checkpoint to await a Malaysian-registered white saloon car bearing registration no JBB 9373. At 3.05 pm, the car driven by the appellant, who was accompanied by a female Chinese later ascertained to be Ong Hong Yiat ('Ong'), was spotted queuing at one of the car bays at the checkpoint. At about 3.10 pm, it reached counter 20 for immigration clearance. The customs officer directed the car to the customs inspector pit for a '100% check' for drugs.

The car was searched in the presence of the appellant and Ong. A narcotics detector dog, named Clyde, was led into the car. Clyde went to the back of the front passenger seat, wagged its tail and refused to leave the area. According to its handler, Clyde gave an abnormal response indicating the presence of 'some smell pertaining to drugs'.

The appellant and Ong were then searched in separate rooms. In the handbag of Ong, two sachets of brown-